



DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) has determined that a request for a new shipper review (NSR) of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (Vietnam) meets the statutory and regulatory requirements for initiation. The period of review (POR) for the NSR is August 1, 2022, through January 31, 2023.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2243.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the antidumping duty order on certain frozen fish fillets from Vietnam on August 12, 2003.¹ On February 14, 2023, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), Commerce received a timely NSR request from Co May Import Export Company Limited (Co May).²

¹ See *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) (*Order*).

² See Co May's Letter, "Request for New Shipper Review – Co May Import Export Company Limited," dated February 14, 2023 (Co May NSR Request).

In its submission, Co May certified that it is the producer and exporter of the subject merchandise covered by this NSR request.³ Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Co May certified that it did not export certain frozen fish fillets to the United States during the period of investigation (POI).⁴ Additionally, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Co May certified that, since the initiation of the underlying investigation, it has not been affiliated with any producer or exporter that exported certain frozen fish fillets to the United States during the POI, including those not individually examined during the investigation.⁵ Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Co May included a certification that its export activities are not controlled by the central government of Vietnam.⁶ Pursuant to 19 CFR 351.214(b)(2)(iv), Co May certified that it would provide necessary information related to the unaffiliated customer in the United States during the NSR.⁷ Co May also provided a certification by its unaffiliated customer of its willingness to participate in the NSR.⁸

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(v), Co May submitted documentation establishing the following: (1) the date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment and any subsequent shipments, including whether such shipments were made in commercial quantities; and (3) the date of its first sale and any subsequent sales to an unaffiliated customer in the United States.⁹

Additionally, Co May submitted documentation establishing the circumstances surrounding such sale(s), including: (1) the price of such sale(s); (2) any expenses arising from such sale(s); (3) whether the subject merchandise involved in such sale(s) was resold in the

³ *Id.* at Exhibit 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See Co May's Letter, "Co May Import Export Company Limited – Supplemental Response," dated March 22, 2023 (Co May March 22, 2023 SQR).

⁸ See Co May NSR Request at Exhibit 2.

⁹ *Id.* at Exhibits 3 and 4.

United States at a profit; and (4) whether such sale(s) was (were) made on an arm's-length basis.¹⁰ Co May also submitted documentation regarding its business activities, including, where applicable: (1) offers to sell merchandise in the United States; (2) an identification of the complete circumstances surrounding its sale(s) to the United States, as well as any home market or third country sales; and (3) an identification of its relationship to the first unaffiliated U.S. purchaser.¹¹

Commerce conducted a query of U.S. Customs and Border Protection (CBP) data and corroborated the existence of a suspended/Type 3 entry made by Co May.¹² Section 351.214(b) of Commerce's regulations allows Commerce to accept an NSR request when a company exported, or sold for export, subject merchandise to the United States, and can sufficiently demonstrate the existence of a *bona fide* sale for initiation purposes.¹³ As Co May's submission satisfies these requirements, we are initiating an NSR.

Period of Review

In accordance with 19 CFR 351.214(g)(1)(i)(B), the POR for an NSR initiated in the month immediately following the semi-annual anniversary month will be the six-month period immediately preceding the semi-annual anniversary month. Therefore, the POR for this NSR is August 1, 2022, through January 31, 2023.

Initiation of NSR

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on the information on the record, we find that Co May's NSR Request meets the threshold requirements for initiation of an NSR of its shipments of certain frozen fish fillets to the United States.¹⁴ However, if the information supplied by Co May is later found to be incorrect or insufficient during the course of this NSR, Commerce may rescind the review or apply adverse facts

¹⁰ *Id.* at Exhibits 4 and 5; *see also* Co May March 22, 2023 SQR.

¹¹ *See* Co May NSR Request at Exhibits 1 and 6.

¹² *See* Memorandum, "CBP Data Query Results," dated concurrently with this notice.

¹³ *See* 19 CFR 351.214(b).

¹⁴ *See generally* Co May NSR Request.

available, pursuant to section 776 of the Act, as appropriate. Pursuant to 19 CFR 351.221(c)(1)(i), Commerce will publish the notice of initiation of an NSR no later than the last day of the month following the anniversary or semi-annual anniversary month of the order. Commerce intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 90 days after the date the preliminary results are issued.¹⁵

It is Commerce's practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country wide rate (*i.e.*, separate rate) provide evidence of *de jure* and *de facto* absence of government control over the company's export activities.¹⁶ Accordingly, Commerce will issue questionnaires to Co May requesting, *inter alia*, information regarding its export activities for the purpose of determining whether it is eligible for a separate rate. The review of the exporter will proceed if the response provides sufficient indication that the exporter is not subject to either *de jure* or *de facto* government control with respect to its exports of certain frozen fish fillets.

We intend to conduct this NSR in accordance with section 751(a)(2)(B) of the Act.¹⁷ Because Co May certified that it exported subject merchandise, the sale of which is the basis for its NSR request, Commerce will instruct CBP to suspend or continue to suspend liquidation of all entries of subject merchandise produced and exported by Co May. To assist in its analysis of the *bona fide* nature of Co May's sale(s), upon initiation of this NSR, Commerce will require Co May to submit, on an ongoing basis, complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR. Further, in accordance with section 751(a)(2)(B)(iv)(VII) of the Act and 19 CFR 351.214(k), Co May will

¹⁵ See section 751(a)(2)(B)(iii) of the Act.

¹⁶ See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," dated April 15, 2005, available at <https://access.trade.gov/Resources/policy/bull05-1.pdf>.

¹⁷ The Act was amended by the Trade Facilitation and Trade Enforcement Act of 2015, which removed from section 751(a)(2)(B) of the Act the provision directing Commerce to instruct CBP to allow an importer the option of posting a bond or security in lieu of a cash deposit during the pendency of an NSR. This was also codified in Commerce's regulations at 19 CFR 351.214(e).

be required to provide information regarding the following factors for Commerce's consideration in determining whether the sale(s) made by Co May during the POR are *bona fide*: (1) whether the producer, exporter, or customer was established for purposes of making the sale(s) in question after the imposition of the relevant antidumping duty order; (2) whether the producer, exporter, or customer has lines of business unrelated to the subject merchandise; (3) the quantity of sales; and (4) any other factor that Commerce determines to be relevant with respect to the future selling behavior of the producer or exporter, including any other indicia that the sale was not commercially viable.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: March 23, 2023.

James Maeder,
Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023-06468 Filed: 3/28/2023 8:45 am; Publication Date: 3/29/2023]